

AMENDED IN SENATE APRIL 18, 2006

SENATE BILL

No. 1832

Introduced by Senator Kehoe

February 24, 2006

An act to amend Sections 6252 and 6253 of, and to add Section 6253.3 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1832, as amended, Kehoe. Public records: fee waiver.

~~(1) Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies, and to make copies available upon payment of specified fees.~~

This bill would provide that a state-~~or local~~ agency shall not charge a fee for a copy of a public record that it is required to disclose if disclosure of the record is in the public interest because it is likely to contribute to public understanding of the operations or activities of the government and not primarily in the commercial interest of the requester. It would require *state* agency officials to consider specified information about the requester, the information requested, and the proposed use of the information in order to determine whether a requester is eligible for a fee waiver under these provisions. It also would require that any denial of a request for a fee waiver be in writing and set forth the names and titles or positions of each person responsible for the denial. ~~By imposing new duties on local agency officials, this bill would impose a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.~~

~~Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6252 of the Government Code is
2 amended to read:
3 6252. As used in this chapter, the following words have the
4 following meanings:
5 (a) “Commercial interest” means a request intended for a use
6 or purpose that furthers the commercial, trade, or for-profit
7 interests of a requester or the person on whose behalf a request is
8 made.
9 (b) “Local agency” includes a county; city, whether general
10 law or chartered; city and county; school district; municipal
11 corporation; district; political subdivision; or any board,
12 commission or agency thereof; other local public agency; or
13 entities that are legislative bodies of a local agency pursuant to
14 subdivisions (c) and (d) of Section 54952.
15 (c) “Member of the public” means any person, except a
16 member, agent, officer, or employee of a federal, state, or local
17 agency acting within the scope of his or her membership, agency,
18 office, or employment.
19 (d) “Person” includes any natural person, corporation,
20 partnership, limited liability company, firm, or association.
21 (e) “Public agency” means any state or local agency.
22 (f) “Public records” includes any writing containing
23 information relating to the conduct of the public’s business
24 prepared, owned, used, or retained by any state or local agency
25 regardless of physical form or characteristics. “Public records” in
26 the custody of, or maintained by, the Governor’s office means
27 any writing prepared on or after January 6, 1975.
28 (g) “Representative of the news media” means any person
29 actively gathering information that is about current events or of

1 current interest to the public for an entity that is organized and
2 operated to publish or broadcast this information to the public.
3 News media include, but are not limited to, television or radio
4 stations broadcasting to the public and publishers of periodicals
5 that make their products available for purchase or subscription by
6 the general public. A freelance journalist is a representative of
7 the new media if he or she can demonstrate a reasonable basis for
8 expecting publication by a news medium, even though not
9 employed by it, or if he or she has a past publication record
10 sufficient to create a reasonable expectation of an ability to
11 publish.

12 (h) “State agency” means every state office, officer,
13 department, division, bureau, board, and commission or other
14 state body or agency, except those agencies provided for in
15 Article IV (except Section 20 thereof) or Article VI of the
16 California Constitution.

17 (i) “Writing” means any handwriting, typewriting, printing,
18 photostating, photographing, photocopying, transmitting by
19 electronic mail or facsimile, and every other means of recording
20 upon any tangible thing any form of communication or
21 representation, including letters, words, pictures, sounds, or
22 symbols, or combinations thereof, and any record thereby
23 created, regardless of the manner in which the record has been
24 stored.

25 SEC. 2. Section 6253 of the Government Code is amended to
26 read:

27 6253. (a) Public records are open to inspection at all times
28 during the office hours of the state or local agency and every
29 person has a right to inspect any public record, except as
30 hereafter provided. Any reasonably segregable portion of a
31 record shall be available for inspection by any person requesting
32 the record after deletion of the portions that are exempted by law.

33 (b) Except with respect to public records exempt from
34 disclosure by express provisions of law, each state or local
35 agency, upon a request for a copy of records that reasonably
36 describes an identifiable record or records, shall make the records
37 promptly available to any person upon payment of fees covering
38 direct costs of duplication, or a statutory fee if applicable, or
39 upon a determination *by a state agency* that any applicable fee is

1 waived pursuant to Section 6253.3. Upon request, an exact copy
2 shall be provided unless impracticable to do so.

3 (c) Each agency, upon a request for a copy of records, shall,
4 within 10 days from receipt of the request, determine whether the
5 request, in whole or in part, seeks copies of disclosable public
6 records in the possession of the agency and shall promptly notify
7 the person making the request of the determination and the
8 reasons therefor. In unusual circumstances, the time limit
9 prescribed in this section may be extended by written notice by
10 the head of the agency or his or her designee to the person
11 making the request, setting forth the reasons for the extension
12 and the date on which a determination is expected to be
13 dispatched. No notice shall specify a date that would result in an
14 extension for more than 14 days. When the agency dispatches the
15 determination, and if the agency determines that the request
16 seeks disclosable public records, the agency shall state the
17 estimated date and time when the records will be made available.
18 As used in this section, “unusual circumstances” means the
19 following, but only to the extent reasonably necessary to the
20 proper processing of the particular request:

21 (1) The need to search for and collect the requested records
22 from field facilities or other establishments that are separate from
23 the office processing the request.

24 (2) The need to search for, collect, and appropriately examine
25 a voluminous amount of separate and distinct records that are
26 demanded in a single request.

27 (3) The need for consultation, which shall be conducted with
28 all practicable speed, with another agency having substantial
29 interest in the determination of the request or among two or more
30 components of the agency having substantial subject matter
31 interest therein.

32 (4) The need to compile data, to write programming language
33 or a computer program, or to construct a computer report to
34 extract data.

35 (d) Nothing in this chapter shall be construed to permit an
36 agency to delay or obstruct the inspection or copying of public
37 records. The notification of denial of any request for records
38 required by Section 6255 shall set forth the names and titles or
39 positions of each person responsible for the denial.

1 (e) Except as otherwise prohibited by law, a state or local
2 agency may adopt requirements for itself that allow for faster,
3 more efficient, or greater access to records than prescribed by the
4 minimum standards set forth in this chapter.

5 SEC. 3. Section 6253.3 is added to the Government Code, to
6 read:

7 6253.3. (a) A state~~or local~~ agency shall not charge the
8 requester a fee for a record that it is required to disclose under
9 this chapter if disclosure of the record is both of the following:

10 (1) In the public interest because it is likely to contribute to
11 public understanding of the operations or activities of the
12 government.

13 (2) Not primarily in the commercial interest of the requester.

14 (b) To determine whether a record is in the public interest
15 pursuant to paragraph (1) of subdivision (a), a state or local
16 agency shall consider all of the following:

17 (1) The subject of the request: whether the subject of the
18 requested records concerns the operations or activities of
19 government. The subject of the requested records must concern
20 identifiable operations or activities of state or local government
21 with a connection that is direct and clear, not remote.

22 (2) The informative value of the information to be disclosed:
23 whether the disclosure is likely to contribute to an understanding
24 of government operations or activities. The disclosable portions
25 of the requested records must be meaningfully informative about
26 government operations or activities in order to be likely to
27 contribute to an increased public understanding of those
28 operations or activities.

29 (3) The contribution to an understanding of the subject by the
30 public is likely to result from disclosure: whether disclosure of
31 the requested information will contribute to public
32 understanding. ~~A requester's expertise in the subject area and~~
33 ~~ability and intention to effectively convey information to the~~
34 ~~public will be considered. It will be presumed that a~~
35 ~~understanding. It will be presumed that a~~ representative of the
36 new media will satisfy this consideration.

37 (c) To determine whether a record is primarily in the
38 commercial interest of the requester pursuant to paragraph (2) of
39 subdivision (a), a state or local agency shall consider both of the
40 following:

1 (1) The existence and magnitude of a commercial interest:
2 whether the requester has a commercial interest that would be
3 furthered by the requested disclosure. ~~State and local agencies~~ A
4 *state agency* shall consider any commercial interest of the
5 requester, or of any person on whose behalf the requester may be
6 acting, that would be furthered by the requested disclosure.

7 (2) The primary interest in disclosure: whether any identified
8 commercial interest of the requester is sufficiently large, in
9 comparison with the public interest in disclosure, that disclosure
10 is primarily in the commercial interest of the requester. A fee
11 waiver is justified where the public interest standard is satisfied
12 and that public interest is greater in magnitude than any
13 speculative commercial interest in disclosure.

14 If ~~an~~ a *state agency* has reasonable cause to doubt whether the
15 requester has a commercial interest in the records sought, or
16 where that interest is not clear from the request itself, the agency
17 shall seek additional clarification.

18 (d) A request for a waiver of any fee for a record shall be
19 submitted along with a request for records. If a ~~state or local~~
20 agency determines that a request for a fee waiver includes
21 insufficient information to justify a waiver, it shall identify what
22 additional information is required and provide the requester an
23 opportunity to supplement the request.

24 (e) Any denial of a request for a fee waiver under this section
25 shall be in writing and set forth the names and titles or positions
26 of each person responsible for the denial.

27 (f) In any action by a requester regarding the waiver of a fee
28 under this section, the court shall determine the matter de novo,
29 provided that the court's review of the matter shall be limited to
30 the record before the agency. A court may award court costs and
31 reasonable attorney's fees to the plaintiff should the plaintiff
32 prevail in litigation filed pursuant to this section.

33 ~~SEC. 4. If the Commission on State Mandates determines that~~
34 ~~this act contains costs mandated by the state, reimbursement to~~
35 ~~local agencies and school districts for those costs shall be made~~
36 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
37 ~~4 of Title 2 of the Government Code.~~